TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 140.

AMERICAN COLORTYPE COMPANY, APPELLANT,

vs.

CONTINENTAL COLORTYPE COMPANY, WILLIAM J. MAE, BAXTER J. FIERLEIN, HENRY FREESE, HENRY SCHULTZ, O. H. QUETSCH, AND J. O. H. SEIBERT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED SEPTEMBER 29, 1902.

(15,699.)

(18,668.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1902.

No. 440.

AMERICAN COLORTYPE COMPANY, APPELLANT,

vs.

CONTINENTAL COLORTYPE COMPANY, WILLIAM J. MAAS, BAXTER J. FIERLEIN, HENRY FREESE, HENRY E. SCHULTZ, O. H. QUETSCH, AND J. O. M. SEIBERT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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1 Pleas in the Circuit Court of the United States for the Northern District of Illinois—Northern Division, in Chancery sitting at the United States Court room, in the City of Chicago, in said District and Division, before the Honorable Christian C. Kohlsaat, District Judge of the United States for said Northern District of Illinois, on Friday, the twenty-fifth day of July, being one of the days of the regular July Term of said Court, in the year of our Lord one thousand nine hundred and two and of our Independence the one hundred and twenty seventh year. Placita.

2 MARSHALL E. SAMPSELL,
Clerk.

sts.
23.

American Colortype Company
26385 *vs.*
Continental Colortype Company, William J. Maas, Baxter J. Fierliein, Henry Freese, Henry E. Schultz, O. H. Quetsch, and J. O. M. Seibert, } In Chancery.

NORTHERN DISTRICT OF ILLINOIS—NORTHERN DIVISION.

Be it remembered that on this day to-wit: the twenty-third day of July, 1902, came the complainant, American Colortype Company, by its solicitors, Messrs. Lackner, Butz and Miller and filed in the clerk's office of said Court its Bond for Costs in words and figures following to-wit:

3 United States of America, Northern District of Illinois } ss. Northern Division.

Circuit Court,

May Term, A. D. 1902

American Colortype Company, a corporation,
vs.
Continental Colortype Company, William J. Maas, *et al.* } In Chancery.

The City Trust, Safe Deposit and Surety Company of Philadelphia, enters itself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this Court; and in default of payment by the complainant of any costs ordered or adjudged to be paid by it, hereby agree and stipulate that execution may issue against its property for all costs not exceeding two hundred dollars taxed against said complainant,

Dated this 22nd day of July A. D. 1902.

THE CITY TRUST, SAFE DEPOSIT AND SURETY COMPANY OF PHILADELPHIA.

By LOUIS L. DENT
Resident Vice President.

[SEAL]

Attest: D. NEVINS FRENCH.
Resident Assistant Secretary.

Acknowledged before me this ..... day of ..... 190.....

Bond filed 1902.

MARSHALL E. SAMPSELL,
Clerk U. S. Circuit Court, Nor. Dist., Ill.

I,..... a surety on the annexed bond being duly sworn, depose and say that I am worth in real estate, situate in the Northern District of Illinois, the sum of four hundred dolars over and above my just debts and liabilities.

.....

Sworn to and subscribed before me, this..... .....day of .....190.....

MARSHALL E. SAMPSELL,
Clerk.

(Endorsed) Jul. 23, 1902, Marshall E. Sampsell, Clerk.

And on to-wit: the 23rd day of July, 1902, came the complainant in said entitled cause by its solicitors and filed in the Clerk's office of said Court in said cause its Bill of Complaint, in words and figures following to-wit:

Bill of filed 1902

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BILL.

General Number 26285 Term Number

CIRCUIT COURT OF THE UNITED STATES

Northern District of Illinois

Northern Division.

In Chancery.

To the Honorable Judges of the Circuit Court of the United States for the Northern District of Illinois, in Chancery Sitting:—

The complainant, American Colortype Company, respectfully represents unto your Honors as follows:—

1. That it, the complainant, is a corporation duly organized and existing under and by virtue of the laws of the state of New Jersey, having its principal office in the City of Newark, in said state of New Jersey; that the complainant has also an office and place of business in the City of Chicago, Cook County, Illinois, That the defendant, Continental Colortype Company, is a corporation organ-

plaint. 23. ized and existing under and by virtue of the laws of the state of Illinois, and having its principal office and place of business in the City of Chicago, in said state of Illinois; that the other defendants, William J. Maas, Baxter J. Fierlein, Henry Freese, Henry E. Schultz, O. H. Quetsch and J. O. M. Seibert, are all citizens of the state of Illinois, and residents of said City of Chicago.

2. That on and prior to the 20th day of November, 1901, the defendants William J. Maas and Baxter J. Fierlein were the sole members of a copartnership known and doing business as the Maas Engraving Company, which said copartnership was engaged in said City of Chicago in the business, among other things, of producing plates to be used in the production of colored pictures, known as colortype printing, the process by which said plates were made and the printing done being known as the colortype or three color process. That said William J. Maas and Baxter J. Fierlein were both actively engaged in the conduct of said copartnership business, said Fierlein being the sales manager of said business, and said Maas being the manager of the manufacturing department; and that said Maas, as such manager of the manufacturing department, was familiar with the process of producing plates for the business of colortype printing and of printing therefrom.

3. That on and prior to said November 20th, 1901, the National Colortype Company, a corporation organized and existing under and by virtue of the laws of the state of Illinois, was also engaged in business in said City of Chicago, and that its business also was the production and manufacture of plates for colortype printing and the printing therefrom in three colors; that also on and prior to said November 20th, 1901, the American 3-Color Company, a corporation organized and existing under and by virtue of the laws of the state of Illinois, was also engaged in said City of Chicago in the business of the production and manufactue of plates for colortype printing and printing therefrom in three colors.

4. That on said November 20th, 1901, the said defendants, Baxter J. Fierlein and William J. Maas, being desirous of disposing of their said copartnership business so carried on under the name of the Maas Engraving Company, offered to sell the same to said National Colortype Company for the sum of Eighty-four Hundred Dollars; and the said National Colortype Company, in consideration of the agreement of said William J. Maas and Baxter J. Fierlein to sell and transfer all the assets of said copartnership of said Maas Engraving Company, and of the further agreements of said parties that the said Baxter J. Fierlein should enter into a contract of employment as hereinafter set forth with said American 3-Color Company, and that said William J. Maas should enter into a contract of

employment as hereinafter set forth with the said National Colortype Company, agreed to pay and did pay the said Baxter J. Fierlein and William J. Maas the sum of Eighty-four Hundred Dollars, partly in cash and partly in promissory notes of said National Colortype Company; that on said last-mentioned date a bill of sale was executed by said defendants, William J. Maas and Baxter J. Fierlein, doing business as Maas Engraving Company, to the National Colortype Company, covering all the assets of said copartnership, and that all the assets and business of said copartnership were thereupon transferred and turned over to said National Colortype Company. That a copy of said bill of sale is hereto attached, marked "Exhibit A" and made a part hereof. Bill of filed 1902.

5. That in and by said bill of sale, it was agreed, as a part of the sale and purchase of the assets of said Maas Engraving Company, that the said Baxter J. Fierlein should enter into a contract of employment with said American 3-Color Company, of Chicago, for a period of two years from December 1, 1901, and that said William J. Maas should enter into a contract of employment with said National Colortype Company for a period of five years from said December 1st, 1901, the terms of said contracts of employment being more particularly set forth therein. That the said American 3-Color Company, for the purpose of securing the services of said Baxter J. Fierlein for the period and upon the terms set forth in said contract of employment between said American 3-Color Company and said Fierlein, furnished a substantial portion of said sum of Eighty-four Hundred Dollars paid to said Maas and Fierlein for said tract, Exhibit A, and that the agreements of said Maas and said Fierlein to enter into the employ, respectively, of said National Colortype Company and said American 3-Color Company, were a material part of the consideration of said purchase by said National Colortype Company and for the furnishing of a part of the price of said purchase by said American 3-Color Company. That the principal inducement to said National Colortype Company to purchase said business was the agreement of said Maas to enter the employ of said National Colortype Company for a period of five years as hereinafter set forth, and the principal to said American 3-Color Company to furnish a portion of said purchase price, as hereinafter stated, was the agreement of said Fierlein to enter the employ of said American 3-Color Company for a period of two years; That the principal and only inducement to the National Colortype Company to employ said Maas was his knowledge and skill in making colortype plates and his agreements set forth in his contract of employment of November 20, 1901, particularly his agreements to remain in the employ of said

plaint, 23, company for five years, not to divulge secrets or information, and not to engage in any manner in a competing business for a term of years.

6. That on the same date, namely: November 20th, 1901, and as a part of the same transaction, the said William J. Maas entered into a contract of employment with said National Colortype Company, a copy of which said contract is hereto attached, marked "Exhibit B" and made a part hereof. That in and by said contract said National Colortype Company agreed to employ and did employ said Maas in its business in the capacity of superintendent of its plate making department, and said Maas agreed to accept said employment for the period of five years from December 1st, 1901, and that he would faithfully perform all the duties pertaining to the same, and further agreed that he would not, during said period of five years, accept employment in the capacity above mentioned, or in any other capacity with any person or corporation engaged in the business of three-color printing; that he, said Maas, would not, for a period of ten years from said December 1st, 1901, in any of the states or territories of the United States east of the Rocky Mountains, become interested in, either as owner, stockholder, employer, employee, or otherwise, any three-color printing business, or in any business doing a similar class of work to that of the National Colortype Company; also that he would not, during such ten years, divulge to any person or persons any secrets or processes relating to the business of three-color printing of which he might then be possessed, or which he might learn during his term of employment, and that he would not, during such time, teach such processes to any person whomsoever; and it was further stated in said contract that it was understood to be a part of the consideration of said employment as well as a part of the consideration of the purchase of the business of said Maas Engraving Company, that said Maas should not engage or be interested in, for the period of ten years from December 1st, 1901, any business similar to that carried on by said National Colortype Company.

8 7. That on the same date, namely: November 20th, 1901, and as a part of the same transaction, said Baxter J. Fierlein, as provided in said bill of sale, entered into a contract with said American 3-color Company, whereby said company employed said Fierlein in the capacity of salesman for the period of two years from December 1st, 1901, and the said Fierlein agreed to devote his whole time and attention to the interest of said business of said American 3-Color Company, and to perform faithfully the duties

of his employment; a copy of which said contract is hereto attached, marked "Exhibit C", and made a part hereof. Bill of filed 1902.

8. That on or about December 1st, 1901, said William J. Maas entered into the employ of said National Colortype Company, pursuant to said contract, and became superintendent of its plate making department, and in addition to the secrets and processes relating to the business of three-color printing of which said Maas was in possession on December 1st, 1901, he, the said Maas, by virtue of and as a necessary result of his employment by said National Colortype Company, became possessed of other secrets relating to the process of making colortype plates and printing therefrom; that said Mass was fully and freely instructed by the officers and other employees of the National Colortype Company in such secrets, and that said officers and said company, in so doing, confided in the aforesaid promises of said Maas and in his supposed honesty and reliability.

9. That said Baxter J. Fierlein also, on or about December 1st, 1901, entered into the employ of said American 3-Color Company, pursuant to said contract, "Exhibit C", and the said American 3-Color Company, relying upon said contract and confiding in his supposed honesty, acquainted said Fierlein with the names of all its customers and its methods of doing business and its means of securing trade and customers.

10. That the said William J. Maas continued as aforesaid in the employ of said National Colortype Company, and the said Baxter J. Fierlein continued as aforesaid in the employ of said American 3-Color Company, until on or about the 15th day of February, 1902, when said National Colortype Company and said American 3-Color Company, and a corporation known as the Osborne Company, organized under the laws of the state of New
9 Jersey and then engaged in the business of making and selling calendar backs, entered into an agreement to consolidate and combine their respective business interests under the name and style of the American Colortype Company, and on or about March 1st, 1902, pursuant to said agreement, the complainant corporation was formed, and each of said companies transferred to the complainant all the assets of each and all of said respective companies, including goodwill, trade secrets and all contracts of whatever name and nature, including among other things, all assets of said copartnership formerly known at the Mass Engraving Company, and said contracts hereinabove referred to as Exhibits A, B and C, copies of which are hereto attached, and that all of said contracts were transferred, said contracts designated as Exhibits A and B by said National Colortype Company, and said contract

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designated as Exhibit C by said American 3-Color Company, to the complainant, as a part of the consolidation of the business of said respective companies; and that since said date the business of three-color printing and plate making for that purpose of said respective companies, and all the business theretofore conducted by the National Colortype Company, including the business formerly carried on by the copartnership known as Maas Engraving Company, and all the business formerly carried on by the American 3-Color Company, has been continued and now is carried on by the complainant under the name of the American Colortype Company. That the trade and business of said National Colortype Company, on November 20th, 1901, extended throughout the United States, east of the Rocky Mountains, and the business of the complainant since its organization, has extended and now extends throughout said territory.

11. That said William J. Maas, well knowing of said consolidation and said transfer to the complainant of the business, assets and good will of the National Colortype Company, and well knowing of the transfer to the complainant of the said contracts herein designated as Exhibits A and B, consented to said transfer, and announced his intention of holding the complainant upon said contracts, and remained in the employ of the complainant in the same capacity that he was prior to March 1st, 1902, employed by the National Colortype Company, namely: in the capacity of superintendent of plate making, and that he so remained in the employ of the complainant and accepted the salary stipulated in said contract, Exhibit B, and in all respects acquiesced in said contract, Exhibit B, and recognized the complainant as his employer thereunder, until on or about July 1st, 1902, and that since said consolidation said Maas has been instructed by complainant in secrets of great value in making colortype plates; and the complainant says that by the acts and doings of said National Colortype Company, and the said William J. Maas and the complainant on and after said March 1st, 1902, the complainant, by the consent of all parties, became substituted as a party to said contract, Exhibit B, in place and in lieu of the National Colortype Company. That the surroundings of said Maas and his conditions of work have been the same since said consolidation as before.

12. That the said Baxter J. Fierlien, also well knowing of the aforesaid consolidation and the aforesaid transfer of all the assets and contracts and good will of the American 3-Color Company to the complainant and consenting thereto, and well knowing of the transfer by said American 3-Color Company to the complainant of the contract herein referred to as Exhibit C, consented thereto

and remained in the employ of the complainant from said March 1st, 1902, until on or about July 1st, 1902, in the capacity of salesman of the complainant, visiting its customers and dealing with the same, and receiving and accepting the salary stipulated in said contract Exhibit C; and the complainant avers that by the acts of said American 3-Color Company and said Baxter J. Fierlein and the complainant on and since March 1st, 1902, the complainant, by the consent of all said parties, has become substituted as a party to said contract Exhibit C, in place and in lieu of the American 3-Color Company. Bill of filed 1902

13. That the defendant, Henry Freese, on December 1st, 1900, entered into a contract with said National Colortype Company (which was at that time doing business in said City of Chicago under the name of the Chicago Colortype Company, for the purpose of preserving the good will of the Chicago Colortype Company, whose assets, good will and business had before that time been purchased by said National Colortype Company), wherein said Freese agreed to enter the employ of said company from then until May 1st, 1903, in its copper plate etching department
11 and wherein said Freese agreed never to divulge to anyone any of the secrets or methods or practices of said company, and especially to keep said colortype process strictly secret, and not to divulge, either directly or indirectly, any knowledge thereof to any person or persons, and that he, said Freese, would not, during the period of said contract, enter the employ of any person, firm or corporation engaged in the same business as said company, or in a similar business, nor would he, during said period, engage in any work , except for said company, wherein he would be able to utilize the knowledge acquired while working for said company; and in which contract it was stated that said company would not divulge any of its secrets to said Freese or allow him to gain any knowledge of its processes or practices were it not for the faithful promise of said Freese not to divulge the same; that he, Freese, thereupon and pursuant thereto, entered into the employ of said National Colortype Company, and that said company, relying upon said contract and upon the supposed honesty and faithfulness of said Freese, freely and fully instructed said Freese in the secret arts and processes relating to colortype printing and the making of plates for said colortype printing, as it was necessary to do in order to utilize the services of said Freese, and that said contract with said Freese, at the time of the transfer to the complainant by the National Colortype Company of its assets was also transferred by said National Colortype Company with the consent of said Freese, who thereupon, with full knowledge of said consolidation and trans-

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fer, and giving his full assent thereto, became under said contract employed by the complainant, and so remained until on or about July 1st, 1902, and that said Freese, since said consolidation, has been instructed by complainant in secrets of great value to complainant in making colortype plates; and that by the acts of said Freese and said National Colortype Company and the complainant the latter company became by the consent of all parties substituted as the employer of said Freese and as a party to said contract with said Freese; that a copy of said contract is hereto attached, marked "Exhibit D" and made a part hereof.

14. That the defendant Henry E. Schultz was prior to July 1, 1902, in the employ of the complainant under a contract to work for it in its photographing department until August 1st, 1902; and by virtue of his said employment has become possessed of certain secrets and processes belonging to complainant relating to three-color printing.

15. That the defendants, O. H. Quetsch and J. O. M. Seibert, prior to the conspirary hereinafter mentioned and prior to November 20th, 1901, were officers and directors of an Illinois corporation, known as Seibert-Quetsch & Co., which company did printing for the copartnership known as Maas Engraving Company in connection with its colortype printing.

16. That on or about the month of May, 1902, the said Baxter J. Fierlein and William J. Maas, while still in the employ of the complainant, conceived the fraudulent scheme and design of violating their aforesaid contracts with the complainant, and robbing the complainant, as far as they could, of the entire consideration, amounting to Eighty-four Hundred Dollars, which they, the said Maas and said Fierlein had received from the American 3-Color Company and the National Colortype Company, the predecessors and constituents of the complainant; that said Maas and Fierlein were aided and abetted in their said nefarious conspiracy by the defendants, O. H. Quetsch and J. O. M. Seibert, and to that end said four defendants, on or about July 1st, 1902, caused the name of said Seibert Quetsch & Co. to be changed to the "Continental Colortype Company"; that said four defendants, as the complainant is informed and believes, all became stockholders an directors of said Continental Colortype Company; and that said Fierlein became president, said Quetsch vice-president, said Maas secretary, and said Seibert treasurer of said company; that all said parties, as complainant is informed and believes, contributed to the capital stock and resources of said Continental Colortype Company, said Maas and Fierlein devoting to that purpose the said Eighty-four Hundred Dollars or a part thereof.

17. That said Continental Colortype Company is located and doing business in said City of Chicago and was formed by said four defendants for the sole purpose of defrauding and despoiling the complainant of the whole consideration paid by its predecessors for the aforesaid contracts of November 20th, 1901, by engaging, in the city of Chicago aforesaid, in the business of making colortype plates
13 and printing therefrom, by and through the knowledge and experience of said Maas and Fierlein, and the aid of said Freese and Schultz and any other of complainant's employees whom they might be able to induce to violate their contracts. That it is the intention of said Continental Colortype Company and said defendants, Maas, Quetsch, Fierlein and Seibert, to engage and enter into the business, in said City of Chicago, of making plates for colortype printing and printing therefrom, in competition with the complainant, and that said intention has been announced by a circular letter, a copy of which is hereto attached, marked "Exhibit E", and made a part hereof, which letter has been widely published and sent to the complainant's customers by said five last named defendants; that said Continental Colortype Company, said Quetsch and said Seibert are and will be wholly unable to engage or continue in the business of producing plates for colortype printing or printing therefrom without the aid and knowledge possessed by said Maas and said Fierlein on November 20th, 1901, and acquired by them since that time while in the employ of the complainant and of the National Colortype Company and of the American 3-Color Company; that said Continental Colortype Company and said Quetsch and said Seibert and their employees have acquired whatever knowledge they have concerning the making of colortype plates through the fraud and villainy of the defendants Maas and Fierlein, and the breach of their contracts as herein set forth, and that said Quetsch and Seibert, as the complainant is informed and believes aided and abetted said Maas and Fierlein in the formation of said Continental Colortype Company, with full knowledge of the fact that the acts of said Maas and Fierlein in agreeing to divulge to said company and said other dedendants their knowledge concerning the said business was a gross violation of their contracts with the complainant.

18. The complainant further says that the said Maas and said Fierlein, in the month of June, 1902, while still both in the employ of the complainant, and while both drawing salaries from the complainant, devoted their time, not to the furtherance of the interest of complainant's business, but to the consummation of their conspiracy to defraud the complainant of its property; that while so being
14 paid by the complainant, the defendant Fierlein employed his time, as complainant is informed and believes, in preparing from

aint. 3. complainant's books, a list of complainant's customers, and a complete copy of complainant's estimates on colortype work and the parties for whom same was made, for the purpose of thereafter using the same to divert the complainant's business to the Continental Colortype Company and its officers; and that the said Fierlein and the said Maas, while both being paid for their time by the complainant, employed their time in intriguing with and corrupting other of complainant's employees who were under contract to work for the complainant for terms yet unexpired and who had agreed with the complainant not to divulge any of the secrets or processes of the complainant, or to work for others than the complainant in any work wherein such secrets or processes might be used; that by such nefarious practices the said defendants, Maas and Fierlein, while so being paid by the complainant for their time, induced the said Freese to break faith with the complainant, to violate his contract, and join their said conspiracy, and the said Freese has since July 1st, 1902, pursuant to the inducements and bribes offered him by said other defendants, left the complainant's employ and entered into the employ of the Continental Colortype Company, and said other defendants, with the intention of disclosing to said other defendants all the knowledge concerning the secrets and processes of the complainant for the making of colortype plates and printing therefrom possessed by him, which secrets and processes were learned by said Freese while in the employ of the complainant and its said predecessors; and that said Maas and Fierlein have also, by like nefarious practices and fraudulent inducements, procured the said defendant Schultz to violate his contract with the complainant and join their said conspiracy and accept employment with said Continental Colortype Company, which said Schultz has since done.

19. That although the complainant has in all things observed its contracts with said Maas and Fierlein, as well as said Freese and Schultz, the said Maas and Fierlein, on or about the first day of July, 1902, gave notice to the complainant that they would at once quit the complainant's employ, which they thereupon did, without assigning or having any reason therefor, having first, however, used the positions which they had with the complanant chiefly to prepare themselves for the consummation of their plans to rob the complainant of its lawfully acquired property.

20. That the so-called "Maas" process of color plate making, mentioned in said circular letter called Exhibit E, is a process which said Maas, on November 20th, 1901, agreed not to use except for the benefit of said National Colortype Company; that the production of "colored photography", and "printing of reproductions of art subjects and all kinds of merchandise", and "the color-plate making"

Bill of filed 1902.

mentioned in said circular, Exhibit E, all refer to the process and processes of the complainant, namely: the manufacture of socalled colortype plates and printing therefrom; that "colortype printing" and colortype plates" have a well known and well established meaning in the trade, the latter being plates made by a secret photographic process for the exact reproduction by means of three colors printed by three separate plates, of pictures and articles of merchandise.

21. The complainant further shows and alleges that in the manufacture of said colortype plates and in the printing of pictures therefrom, the complainant has acquired and now possesses many new and original processes, which it is to its interest to keep secret; that aside from the complainant and the defendant Continental Colortype Company, there are but few manufacturers of said colortype plates, and each manufacturer preserves the secrecy of the processes for such manufacture known to himself; that the complainant has developed the process for the manufacture of said colortype plates more highly than any other manufacturer, and in so doing has acquired and is in possession of secrets employed in such manufacture known only to itself and its employees; that such secrets are an important and very valuable asset of complainant's business: that by virtue of the position and employment of the said defendant Maas with the complainant, it became necessary to acquaint said defendant with all said secrets and he was so fully acquainted with them; that by virtue of said Frees' employment with the complainant, it was also necessary to acquaint the said defendant Freese with many of the said secrets of the com-
16 plainant for the manufacture of said colortype plates, and said Freese was so acquainted with many of said secrets while in the complainant's employ. That said Feese, by virtue of his said employment, necessarily had access to the complainant's lists of customers and estimates on colortype work, which lists and estimates were of great value to complainant, and were kept secret by it.

22. That the complainant and its said predecessors and constituent companies have used great care to prevent the communication of said secrets and processes to others and to that end have bound their various employees by contract to preserve the secrecy of the processes communicated to them, and have excluded from their factories all except those necessarily employed therein, and have communicated such secrets only to those employes who were required to know them in order to conduct the business.

23. Complainant further alleges that the defendants Maas, Fierlein, Freese and Schultz have each contracted with said defendant Continental Colortype Company to, and unless restrained

mplaint, y 23.

by the order of this court will, divulge to said Continental Colortype Company and to the defendants Quetsch and Seibert, all their knowledge rgarding the secrets and processes relating to the manufacture of colortype plates and printing therefrom, both the knowledge which said defendants had when they respectively entered the employ of the complainant and its predecessors, and the knowledge which they have obtained while in the employ of the complainant and its predecessors, and that the defendant Fierlein, unless restrained by the order of this honorable court, will divulge to said defendant Continental Colortype Company all the knowledge which he, by virtue of his employment with the complainant and with the American 3-Color Company, has obtained as to the customers and business and business methods of the complainant, all of which would be contrary to equity and good conscience, would be a violation by said several defendants of their various contracts hereinbefore mentioned, and would result in depriving the complainant of a large part of the consideration for which said Maas and Fierlein were paid the said sum of Eighty-four Hundred Dollars, and would injure the complainant to an extent greater than Two Thousand Dollars. That to permit the defendants to carry out their dishonest and fraudulent plans and schemes as herein set forth, or to permit the defendants Maas and Fierlein and Freese, or any of them, to remain in the employ of the said Continental
17 Colortype Company, or to permit said Continental Colortype Company to reproduce colortype plates and print therefrom by means of information heretofore obtained or hereafter to be obtained from said other defendants, or any of them, would result in irreparable damage and injury to the complainant, the extent of which cannot be ascertained or measured in money; that the value of said contracts, Exhibits A, B, and C, to the the complainant, is at least equal to the amount paid therefor, namely, Eighty-four Hundred Dollars.

25. That upon being notified or learning that said defendants, William J. Maas, Baxter J. Fierlein, Henry Freese and Henry E. Schultz, intended to leave the employ of the complainant, the complainant at once protested to said parties, and each of them, against their and each of their leaving complainant's employ, and urged them, and each of them, to return to and remain with and in the employ of the complainant, but that said parties and each of them, refused to do so. That the complainant is now ready and willing to receive back into its employ the said parties and each of them, upon the terms and conditions of their several aforesaid respective contracts with the complainant, and upon the terms and conditions under which said parties respectively were working

for the complainant before the time or times of their so leaving as aforesaid.

Bill of c filed J 1902.

26. Complainant further shows unto the court that unless a restraining order be issued herein forthwith, and without notice and a temporary injunction be issued herein until this cause can be heard and determined on the merits, the defendants, formerly employed by the complainant, will in the meantime, colluding and conspiring together and with the other defendants, immediately proceed to disclose and impart all the said valuable information and secrets, and thereby the complainant will be irreparably injured in the premises, and will be hindered and delayed, and any injunction which might ultimately be issued herein rendered in a large measure ineffectual.

18 Foras much, therefore, as the complainant is without remedy in the premises save in a court of equity, the complainant prays that the said Continental Colortype Company, William J. Maas, Baxter J. Fierlein, Henry Freese, Henry E. Schultz, O. H. Quetsch and J. O. M. Seibert, may be made parties defendant to this bill; that they may be required to answer the same, but not under oath, the answer under oath being hereby expressly waived; that the defendants may be restrained and enjoined by the order of this honorable court as follows: that the defendant William J. Maas be restrained and enjoined until December 1st, 1911, from becoming interested in, in any of the states and territories of the United States east of the Rocky Mountains, either as owner, stockholder, employer, employee or otherwise, in any three-color printing business or in any business doing a similar class of work to that of the complainant as hereinabove set forth, and from divulging until said date, to any person or persons any secrets or processes relating to the business of three-color printing which he may now be possessed of and from teaching any such process or processes to any person whomsoever and from accepting employment, until said date, in any capacity with any person or corporation engaged in the business of three-color printing; and that the said defendant, William J. Maas, be further restrained and enjoined, until said date, from in any manner, directly or indirectly, working for or rendering any assistance or aid of any kind, name or nature, to the Continental Colortype Company, O. H. Quetsch or J. O. M. Seibert, and from in any manner, directly or indirectly, imparting to said parties or any of them, using for their benefit or for the benefit of any of them, or permitting to be used or availed of by said parties or any of them, in any way whatsoever, the skill, knowledge or ability possessed by said defendant William J. Maas, in the production of colortype plates or printing therefrom, and from in any manner,

nplaint, y 23,

until said date, directly or indirectly, being in any way interested, either as employee, principal, agent, stockholder, officer, director, or any capacity whatsoever, in said Continental Colortype Company, or the business carried on by it, and from in any manner, directly or indirectly, disclosing to said Continental Colortype Company, or said O. H. Quetsch or said J. O. M. Seibert, or said
19 Baxter J. Fierlein, or any of them, or their or its officers, directors, agents, employees, servants, or attorneys, any information, knowledge, trade secret, method, process or processes of any kind, name or nature, relating to the production of colortype plates or printing therefrom, and from disclosing to said Continental Colortype Company, said Questch, or said Seibert, or any of their or its officers, directors, agents, employees, servants or attorneys, any of the business secrets, names of customers of the complainant, or other information relating to the business of the complainant obtained by said defendant while in the employ of the complainant or its predecessors or any of them; that the defendant Baxter J. Fierlein, be enjoined and restrained, until December 1st, 1903, from in any manner, directly or indirectly, working for, rendering any assistance or aid of any kind, name, nature or description, to the defendants, Continental Colortype Company, O. H. Quetsch and J. O. M. Seibert, or any of them, in any capacity whatsoever, and from working for, rendering any assistance or aid of any kind to any person, firm or corporation engaged in the three-color plate making or printing business in any capacity whatsoever, or disclosing to said Continental Colortype Company, or the defendants O. H. Quetsch and J. O. M. Seibert, or any of them or any other person, the list of customers or estimates or other business secrets of the complainant learned by said Fierlein while in the complainant's employ, or in the employ of the American 3-Color Company; that the defendant, Henry Freese, be restrained and enjoined, until May 1st, 1903, from divulging to any person any of the secrets or methods or practices of the complainant or of the National Colortype Company, which he learned while in the employ of them or either of them, or which he knew when he entered their employ, and from divulging, either directly or indirectly, to any person whomsoever, any knowledge of the process of producing colortype plates or printing therefrom which said Freese learned while in the employ of the complainant or the National Colortype Company, or which he knew when entering the employ of said companies, or either of them, and from entering the employ of any person, firm or corporation engaged in the business of manufacturing or producing colortype plates or printing therefrom, or any similar business

or in any business wherein he will or may be able to utilize Bill of filed 1902.
20 the knowledge acquired while working for the complainant, or the National Colortype Company, and that said Henry Freese may be further enjoined and restrained, until May 1st, 1903, from in any manner, directly or indirectly, working for, rendering any assistance or aid of any kind, name or nature, to the Continental Colortype Company, said O. H. Quetsch or said J. O. M. Seibert, said William J. Maas, said Baxter J. Fierlein, or either of them, and from in any manner, directly or indirectly, imparting to said Continental Colortype Company, said Quetsch or said Seibert, or said Maas or said Fierlein, or either of them, or using for the benefit of them or either of them, or permitting them or either of them to avail themselves or any of themselves, in any way whatsoever, of the skill, knowledge or ability, or secrets possessed by the said Freese, for the production of colortype plates or printing therefrom, and from remaining in the emply in any capacity whatsoever of said Continental Colortype Company, or said O. H. Quetsch or said J. O. M. Seibert or said Maas or said Fierlein, and from becoming employed by or remaining in the employ of, in any capacity whatsoever, any person, firm or corporation engaged in a business similar to that of the complainant; that the defendant Henry E. Schultz be enjoined and restrained until August 1st, 1902, from being or remaining in any capacity whatsoever, in the employ of the defendant Continental Colortype Company, said O. H. Quetsch or said J. O. M. Seibert, said William J. Maas or said Baxter J. Fierlein, or any or either of them; that the defendants, Continental Colortype Company, O. H. Quetsch and J. O. M. Seibert be each and all retrained and enjoined, until the several times aforesaid, from using or employing, in any capacity whatsoever, the services, aid or assistance of said William J. Maas, or said Baxter J. Fierlein, or said Henry Freese, or said Henry E. Schultz, and from using, employing or taking advantage of, in any manner whatever, any information relating to the production of colortype plates or printing therefrom, at any time obtained from said William J. Maas, said Baxter J. Fierlein, said Henry Freese, said Henry E. Schultz or any of them, and from making or continuing to make three-color plates or printing therefrom by means, di-
21 rectly or indirectly, of any knowledge or information obtained from the defendants, William J. Maas, Baxter J. Fierlein, Henry Freese, and Henry E. Schultz, or any or either of them, and from retaining any of said persons in their employ, or in the employ of either of them; that a restraining order, restraining and enjoining the defendants in the manner hereinabove prayed, may be entered by the court until the complainant's motion for a tem-

plaint, 23.

porary injunction may be heard and determined by the court; and that a temporary injunction may be issued herein by this court restraining and enjoining the defendants in manner as hereinabove prayed, until a final hearing may be had, and that upon said final hearing said injuction may be made perpetual; and that the complainant may have such other and further relief in the premises as equity may require and to your honors shall seem meet.

May it please your honors to grant the complainant the usual subpœna in chancery, issuing out of and under the seal of this court, to be directed to the said defendants, commanding them to appear before this court, on a certain day therein named, then and there to answer this bill, and abide by such order and decree as to this court may seem meet.

May it also please your honors to grant unto the complainant the writ of injunction in chancery, issuing out of and under the seal of this court, directed to the said defendants, enjoining and restraining them in manner and form as prayed in this bill, and to enter the usual restraining order herein in mannar and form as above prayed.

AMERICAN COLORTYPE COMPANY,
By LACKNER BUTZ & MILLER,
Its Solicitors.

LACKNER, BUTZ & MILLER,
Solicitors for complainant.

22 State of Illinois } ss.
County of Cook }

John H. Behrens, being first duly sworn, upon his oath deposes and says that he is the treasurer of the American Colortype Company, the complainant in the above bill of complaint; that he has read the above and foregoing bill of complaint, and knows the contents thereof and that each and all the matters and things in said bill of complaint contained are in all respects true of affiant's own knowledge, except as to those matters stated to be alleged on information and belief, and as to those matters he believes them to be true.

JOHN H. BEHRENS,

Subscribed and sworn to before me this 22d day of July 1902.

MARGARET C. HANDTMANN,
Notary Public.

[SEAL]

EXHIBIT A.

Exhib
sale
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Memorandum of Agreement, made this 20th day of November, 1901, by and between Maas Engraving Company, a partnership consisting of Baxter J. Fierlein and William J. Maas, all of the City of Chicago, parties of the first part, and the National Colortype Company, a corporation organized under the laws of the state of Illinois, party of the second part, Witnesseth:

1. That said Maas Engraving Company has agreed to sell and convey, and hereby does sell, convey, assign and transfer to the said National Colortype Company all the machinery, tools, stock in trade and other personal property to it belonging and used by it in its business carried on at number 153 LaSalle Street in the City of Chicago, a list of which personal property is hereto attached, marked "Exhibit A," it being, however, understood that the skylight mentioned on said list is not included in the sale, and that said list is supposed to be a correct inventory of the property hereby intended to be sold, but that all the personal property belonging to said business is included in this contract of sale, with the exception of said skylight, the accounts receivable, and the bills receivable, which are reserved to the parties of the first part.

2. The parties of the first part hereby agree and warrant that they have a good title to said property and will hold the party of the second part indemnified in the premises, not only as against their own creditors, but against all parties who may claim any right, title or interest in said property.

3. It is also agreed and understood that the lease of the premises in which said business is now carried on remains the property of said parties of the first part and is not transferred to the party of the second part by the terms of this agreement, and that the party of the second part shall in no wise be held liable for any present or future rent accruing under the terms of said lease.

4. On the part of the party of the second part it is agreed that it will pay to the parties of the first part, as a consideration for said purchase, the sum of Eight Thousand Four Hundred
24 Dollars ($8,400), of which sum Two Hundred Dollars ($200) has this day been paid, the receipt whereof is hereby acknowledged, and the sum of Three Thousand Eight Hundred Dollars ($3,800) is to be paid on December 1, 1901, upon the delivery of said personal property. The balance of Four Thousand Four Hundred Dollars ($4,400) is to be paid by the execution to said William J. Maas of the promissory notes of said National Colortype Company.

—Bill of ov. 29,

One for the sum of Eleven Hundred Dollars, due in one year after December 1, 1901.

One for the sum of Eleven Hundred Dollars, due in two years after December 1, 1901.

One for the sum of Eleven Hundred Dollars, due in three years after December 1, 1901.

One for the sum of Eleven Hundred Dollars, due in four years after December 1, 1901.

all of said notes bearing even date herewith and to bear interest at the rate of six per cent per annum.

5. It is further agreed between the parties hereto that as a part of the sale and purchase of the property herein described, said Baxter J. Fierlein will enter into a contract of employment with the American 3-Color Company of Chicago, bearing even date herewith, for the period of two years from December 1, 1901, the particulars of which said contract are to be more fully therein set forth; and that the said William J. Maas will also enter into a contract of employment with the said National Colortype Company for a period of five years from said December 1, 1891, the particulars of which contract will also more fully appear in said contract of employment.

In Witness Whereof, the parties of the first part have hereunto set their hands and seals, and said party of the second part has caused these presents to be signed by its president and secretary and its corporate seal to be hereto affixed, the day and year first above written.

(Signed) BAXTER J. FIERLEIN, [SEAL]
WILLIAM J. MAAS, [SEAL]
NATIONAL COLORTYPE COMPANY,
By J. H. BEHRENS,
its president.
and FREDERICK S. OSGOOD,
its Secretary.

NATIONAL COLORTYPE COMPANY
Corporate Seal
Chicago, Ills.

Dec. 4/01 Received on above Thirty Eight Hundred Dollars ($3,800.00).

(Signed) WILLIAM J. MAAS.

Dec. 19, 1901.

Received four notes for a total of forty-four hundred dollars, in full settlement of above.

(Signed) WILL J. MAAS.

EXHIBIT B.

Exhibit tra 190

26 Memorandum of Agreement, made by and between the National Colortype Company of the City of Chicago, party of the first part, and William J. Maas, of the same place, party of the second part, Witnesseth:—

That the party of the first part does hereby employ said party of the second part in the capacity of superintendent of its plat-making department in its business carried on in the city of Chicago, or, at its option, at its plant in the city of New York or in any plant in the east hereafter to be by it established, said employent to be for the term of five years from Decemper 1, 1901; and it agrees to pay to said party of the second part a salary of Fifty Dollars ($50) per week, payable weekly, if the employment be in county of Cook, and a salary of Sixty Dollars ($60) per week, payable weekly, if the employment be in any other place than in the county of Cook, said employment to begin on December 1, 1901.

The party of the second part hereby agrees that he will remain in the employment of said company in the capacity hereinbefore mentioned, in the county of Cook, or at any such place in the east as he may be directed to go by the party of the first part, and will give his whole time and attention to the business of said party of the first during said period of five years from said December 1, 1901; that he will faithfully perform the duties of his said employment, under the reasonable rules and regulations of said party of the first part, and that he will not, during said period of five years, accept employment in the capacity above mentioned, or in any other capacity, with any person or corporation engaged in the business of three-color printing.

The party of the second part further agrees that he will not, for the period of ten years from said December 1, 1901, in any of the states or territors of the United States of America east of the Rocky Mountains, become interested in, either as owner, stockholder, employer, employe or otherwise, any three-color printing business, or in any business doing a similar class of work to that of the said National Colortype Company; also, that he will not, during such ten years to any person or persons any secrets or processes relating to the

27 business of three-color printing, of which he may now be possessed or which hemay learn during his term of employment, and that he will not during such time teach such processes to any person whatever,—it beingunderstood that it is a part of the consideration of this employment, as well as a part of the consideration of the purchase of the business of the Maas Engraving Com-

Con-
tr. 20, pany, in which said William J. Maas was interested, made by the party of the first part this day, that the said William J. Maas shall not engage in or be interested in, for the period of ten years from said December 1, 1901, a similar business to that carried on by said National Colortype Company.

It is also agreed, as a part of the consideration of this employment, that two promissory notes this day given by the party of the first part to said William J. Maas as a part of the purchase price of the personal property belonging to said Maas Engraving Company, and which notes are due in three and four years after said December 1, 1901, shall contain a clause that they shall not be due and payable unless the terms of this agreement on the part of said William J. Maas are performed up to the date of the maturity of said notes,—it being the spirit of this agreement that said two notes shall be security for the performance of this agreement on the part of said William J. Maas in all its particulars.

It is also understood that the endorsement on said notes above provided for shall not be construed in any way as stipulating for liquidated damages, but that the party of the first part shall have the right to enforce the performance of this contract on the part of the party of the second part by injunction or otherwise, and in this connection it is also understood that if the period of employment above provided for should at any time be terminated without the fault of the party of the second part before the end of said term of five years, such termination of said employment shall in no way affect the right of the party of the second part to enforce the payment of said notes.

In Witness Whereof, said party of the first part has caused these presents to be signed by its ..... and .....
its corporate seal to be hereto affixed, and said party of the sec-
28 ond part has hereunto set his hand and seal, this 20th day of November, 1901.

(Signed) NATIONAL COLORTYPE COMPANY,

{ National Colortype Company Chicago Ills. SEAL. }

By J. H. BEHRENS,
its President.
and FREDERICK S. OSGOOD,
its Secretary.

WILLIAM J. MAAS. [SEAL]

EXHIBIT C.

Memorandum of Agreement, made between the American 3-Color Company of the city of Chicago, of the first part and B. J. Fierlein of the same place, of the second part, Witnesseth:

That the party of the first part does hereby employ the said party of the second part in its business in the city of Chicago or in the city of New York in the capacity of salesman, at the salary of Fifty dollars per week if the employment be in the city of Chicago, and Sixty dollars per week if the employment be in the city of New York, said employment to last for the period of two years from December 1, 1901, said salary to be payable weekly.

The party of the second part hereby agrees to devote his whole time and attention to the interest and business of the party of the first part and to perform faithfully the duties of his employment under the reasonable rules and regulations of the party of the first part during said period.

(Signed) AMERICAN 3-COLOR COMPANY.
B. J. FIERLIN.

30

EXHIBIT D.

This agreement, made this First day of December, 1900, between the Chicago Colortype Company, hereinafter called the "Company" of the one part, and Henry Freese, of the other part:

Witnesseth: that said Company in consideration of the premises and agreements hereinafter made by the said Freese, hereby agrees as follows:

First: Said company agrees to employ said Freese in their copper Plate Etching Department for a term of two years and five months from the above date, and to instruct him in their method of etching, furnishing him such information as is necessary to gain a thorough knowledge of same.

Said company further agrees to pay said Freese for his services the following amounts, viz:

From December 1st, 1900, to May 1st, 1901, at the rate of Eighteen Dollars ($18.00) per week.

From May 1st, 1901 to May 1st, 1902 at the rate of Twenty-one Dollars ($21,00) per week, and

From May 1st, 1902 to May 1st, 1903, at the rate of Twenty-four Dollars ($24.00) per week, payable weekly.

The regular working time to be in accordiance with Union Rules with the right of said company to call upon said Freese for reasonable overtime work, paying him for such overtime work one and one-half times as much pay as for the same amount of regular work.

Said Freese in consideration of the premises and agreements herein made by said company, agrees to remain in the employ of said company for the full period as above mentioned and to discharge the duties assigned him from time to time conscientiously and to the full extent of his ability, and upon request of said company to work overtime to a reasonable extent at the rate above specified.

And Whereas: The successful prosecution of the business of said Company necessitates keeping secret the processes and practices of said business, said Freese further agrees never to divulge to anyone any of the secrets or methods or practices of said company, and especially to keep said colortype process strictly secret, and not to divulge, either directly or indirectly, any knowledge thereof to any person or persons.

Said Freese also agrees to conform with the rules and regulations of the company in conducting their business.

31 Said Freese further agrees that during the period for which this contract is made, he will not enter the employ of any person, firm or corporation engaged in the same business as said company, or in any similar business, nor will said Freeze during said period engage in any work except for said company wherein he will be able to utilize the knowledge acquired while working for said company.

And whereas, if said Freese should, during the period of this contract, go to work for some other person, firm, or corporation engaged in a line of business similar to that of said company, it might in a suit brought against said Freese to enjoin him from working for such company, as aforesaid, and from divulging any of the secrets or knowledge of the processes and methods employed by said company, be necessary to set forth in said suit what were the secret processes of said company.

And Whereas, Such action would be highly detrimental to the business of said company, said Freese hereby agrees in advance, that to prevent any such necessity, it shall be considered that the mere fact of his going to work for any person, firm or corporation engaged in a similar line of business to that of said company is a breach of his agreement made herein not to divulge any of the secrets of said company.

It is further mutually understood and agreed between the parties hereto that said company would not divulge any of its secrets to said Henry Freeze, or allow him to gain any knowledge of its processes and practices in its business as aforesaid, were it not for the faithful promise of said Henry Freese not to divulge the same.

(Signed) CHICAGO COLORTYPE COMPANY,
By J. H. BEHRENS, *Pres.*
HENRY FREESE.

32 EXHIBIT E.

B. J. Fierlein, President O. H. Quetsch, Vice President
W. J. Mass, Secretary J. O. M. Seibert, Treasurer.
CONTINENTAL COLORTYPE COMPANY (Incorporated)
High Art Color Printing,
Reproducing Pictures, Works of Art and all Kinds
Of Merchandise in Their Natural Colors By the
Three-Color Process.
Main Office & Works 126-132 Market Street,
Chicago,

Sole owners "Maas" process color plate making "Quetsch" register hook.

Long distance telephone Main 412.

ANNOUNCEMENT.

Recognizing the importance to the advertising community of the necessity for another concern capable of doing the highest class of color photography and printing of reproductions of art subjects and all kinds of merchandise, as well as the necessity for such work to be on a plant of excellence superior to anything now being done, we have gathered about us the best and most artistic talent in this particular field, and have organized the Continental Colortype Company, the officers of which consist of the oldest and most tried color man of this country, to-day.

Mr. Maas, who takes charge of our engraving department, until recently owned one of the oldest color plate-making establishments, and is the most scientific process plate-maker known to the advertising public. He is so well known that further mention of him is scarcely necessary.

Mr. Quetsch, who takes charge of our printing department, is too well known from his long experience as a color printer and manager of the printing department of the largest and most artistic establishment in our city, to require much mention; we will add, however, that he has had an experience of over fifteen years on the highest class of work done in this line.

Our equipment is the most perfect to be had—affording us the means of handling the largest possible volume of work. We are, in fact, prepared to take contracts of any size, guaranteeing prompt delivery, as well as having sufficient capital to carry into effect any requirements made of us.

We earnestly solicit your future consideration and assure you

that, if we win one of your orders, we will secure your approval to the extent of retaining you as our customer.

Thanking you in advance for any consideration you may give us, we are,

Yours respectfully,
CONTINENTAL COLORTYPE COMPANY.

(Endorsed) Filed July 23, 1902. Marshall E. Sampsell, Clerk.

And on to-wit: the 23rd day of July, 1902, a chancery subpoena issued out of the clerk's office of said Court, directed to the Marshal of said District to execute, which said subpoena together with the Memorandum thereto attached and the Marshal's return thereon endorsed is in the words and figures following to-wit:

33 United States of America,
Northern District of Illinois, } ss.
Northern Division.

Subpoena 23. *The United States of America, To Continental Colortype Company, a corporation, etc. William J. Maas, Baxter J. Fierlein, Henry Freese, Henry E. Schultz, O. H. Quetsch and J. O. M. Siebert, Greeting:*

We Command You and Every of You, That you appear before our Judges of our Circuit Court of the United States of America, for the Northern District of Illinois, at Chicago, in the Northern Division of said District, on the first Monday in the Month of September next, to answer the bill of complaint of American Colortype Company, this day filed in the Clerk's office of said Court, in said City of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the Marshal of the Northern District of Illinois to Execute.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States of America, at Chicago aforesaid, this 23rd day of July in the Year of our Lord one thousand nine hundred and two, and of our Independence the 127th year.

MARSHALL E. SAMPSELL,
Clerk.

[SEAL]

Memorandum.

The above named defendants are notified that unless they and each of them shall enter their appearance in the Clerk's office of said Court, at Chicago aforesaid, on or before the day to which the above Writ is returnable, the complainant's bill will be taken against them as confessed, and a decree entered accordingly.

MARSHALL E. SAMPSELL,
Clerk.

34 MARSHAL'S RETURN. Marsh filed 1902

This writ is returned unexecuted this 31st day of July, A. D. 1902, by order of the attorneys for complainant.

JOHN C. AMES,
U. S. Marshal.
By M. E. PATTERSON, *Deputy.*

(Endorsed) Filed July 31, 1902. Marshall E. Sampsell, Clerk.

35 And on the same day to-wit: the 23rd day of July, being one of the days of the regular July term of said Court, 1902, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit:

ORDER OF JULY 23, 1902. Order 1902

American Colortype Company,
vs.
Continental Colortype Company, *et al.* } 26385.

Now comes the complainant by its solicitors and enter its motion for a restraining order against the defendants herein. And thereupon it is Ordered that said motion be and the same is hereby postponed for hearing to the 24th inst, the complainant to give notice to said defendants of this motion.

36 And on to-wit: the 24th day of July, 1902, came the defendants in said entitled cause by their solicitors, Messrs Shope, Mathis, Zane & Weber, and filed in the clerk's office of said Court their demurrer in words and figures following to-wit:

Filed 1902.

DEMURRER.

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Northern Division.

In Chancery.

No. 26,385

American Colortype Company,
vs.
Continental Colortype Company, William J. Maas, Baxter J. Fierlein, Henry Freese, H. E. Schults, O. H. Quetsch and J. O. Seibert.

The Demurrer of the above named Defendants to the Bill of Complaint of the above named Complainant.

These defendants, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained to be true, in such manner and form as the same are therein set forth and alleged, doth demurer to the said bill and for causes of demurrer showeth:

(1) That it appeareth by the complainant's own showing by the said bill that he is not entitled to the relief prayed by the bill against these defendants, or any of them;

(2) That it appears by the said bill that this court hath no jurisdiction of the subject matter of this suit, or of the parties to this suit;

Wherefore, and for divers other good causes of demurrer appearing on the said bill, these defendants pray the judgment of this Honorable Court whether the said complainant shall further
37 maintain his aforesaid suit against these defendants, and prays that the said bill of complaint may be dimissed.

SHOPE, MATHIS, ZANE & WEBER,
Solicitors for said defendants.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

JOHN M. ZANE,
Of counsel for said defendants.

State of Illinois } ss.
County of Cook. }

Baxter J. Fierlein, being duly sworn, deposes and says; I am one of the above named defendants, and the foregoing demurrer is not interposed for delay.

B. J. FIERLEIN,

Subscribed and sworn to before me this 25th day of July, A. D. 1902.

W. T. HAPEMALL,
Notary Public.

(Endorsed) Filed July 24, 1902, Marshall E. Sampsell, Clerk.

38 And on to-wit: the 24th day of July, being one of the days of the regular July term of said Court, 1902, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit:

ORDER OF JULY 24, 1902.

American Colortype Co.
vs. } 26385.
Continental Colortype Co.

Now come the parties by their solicitors and now comes on to be heard the motion of the complainant for a restraining order and the same being heard in part, is postponed until tomorrow morning.

39 And on to-wit: the 25th day of July, 1902, there was filed in the clerk's office of said Court in said entitled cause a certain opinion in words and figures following to-wit:

July

OPINION.

IN THE UNITED STATES CIRCUIT COURT

Northern District of Illinois,

Northern Division.

American Colortype Co.
v.
Continental Colortype Co. *et al.* } No. 26,385.

Kohlsaat, District Judge:—
Under the allegations and prayer of the bill in this case I am of the opinion that it falls within the prohibition contained in the Act of Aug. 13, 1888 (U. S. Stat. at Large 433) as construed by the federal courts. The motion for a preliminary injunction is denied and a demurrer will be sustained to the bill for lack of jurisdiction.

(Endorsed) Filed July 25, 1902, Marshall E. Sampsell, Clerk.

40 And on to-wit: the 25th dav of July, being one of the days of the regular July term of said Court, 1902, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit:

25, ning

ORDER OF JULY 25, 1902.

American Colortype Company,
vs.
Continental Colortype Company, *et al.* } 26385.

25. Now again come the parties by their solicitors and the Court having considered the demurrer to the bill herein and being now fully advised in the premises, sustains said demurrer, and the complainant being now ruled to amend its bill instanter, and failing and refusing so to do, elects to stand by its pleadings. And thereupon on motion of the defendants for judgment on said demurrer, It is Ordered that said bill of complaint be and the same is hereby dismissed for want of jurisdiction at the costs of the complainant and that the defendants have execution therefor. And thereupon the complainant enters its motion for an appeal to the United States

Circuit Court of Appeals for this Circuit and the Court fixes the penalty of the appeal bond at the sum of two hundred and fifty dollars.

41 And on to-wit: the 30th day of July, 1902, came the complainant in said entitled cause by its solicitors and filed in the clerk's office of said Court its petition for appeal in words and figures following to-wit:

42 PETITION FOR APPEAL.

IN THE CIRCUIT COURT OF THE UNITED STATES

Northern District of Illinois

Northern Division.

American Colortype Company
vs.
Continental Colortype Company, William J. Maas, Baxter J. Fierlein, Henry Freese, Henry E. Schultz, O. H. Quetsch and J. O. M. Seibert. } In Chancery.

Now comes the complainant, American Colortype Company, and feeling itself aggrieved by the order and decree herein entered on July 25th, 1902, dismissing this bill of complaint at complainant's costs, respectfully prays an appeal from said decree to the United States Circuit Court of Appeals for the Seventh Circuit, and states that its reasons for said appeal are specified in the assignment of errors filed herewith, and prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated and certified by the clerk of this court, may be sent to said United States Circuit Court of Appeals, pursuant to the statute in such case made, and the practice of such court and the rules of this court.

Dated July 25th, 1902.

AMERICAN COLORTYE COMPANY,
By LACKNER, BUTZ & MILLER,
Solicitors for the complainant American Colortype Company.

(Endorsed) Filed July 30, 1902, Marshall E. Sampsell, Clerk.

And on the same day to-wit: the 30th day of July, 1902, came the complainant in said entitled cause by its solicitors and filed in the clerk's office of said Court its assignment of errors in words and figures following to-wit:

July 43

ASSIGNMENT OF ERRORS.

IN THE CIRCUIT COURT OF THE UNITED STATES

Northern District of Illinois

Northern Division.

American Colortype Company
vs.
Continental Colortype Company, William J. Maas, Baxter J. Fierlein, Henry Freese, Henry E. Schultz, O. H. Quetsch and J. O. M. Seibert.

Now on this 30th day of July, 1902, comes the complainant American Colortype Company, and files herein the following assignment of errors upon which it will rely upon its appeal from the decree made and entered herein by this honorable court on the 25th day of July, 1902, dismissing the bill of complaint herein at complainant's costs.

1. The said Circuit Court of the United States erred in dismissing the bill of complaint herein at complainant's costs.

2. The said Circuit Court erred in dismissing the bill of complaint herein for want of jurisdiction.

3. The said Circuit Court erred in sustaining the demurrer of the defendants to the bill of complaint herein.

4. The said Circuit Court erred in not overruling the demurrer of the defendants to the bill of complaint herein.

5. The said Circuit Court erred in not overruling the demurrer of the defendants to the bill of complaint herein and in not thereupon entering a decree enjoining the defendants and each of them as prayed in the bill of complaint.

6. The said Circuit Court erred in not granting to the complainant the relief prayed for in the bill of complaint.

Wherefore, the said American Colortype Company, complainant in this suit, prays that said decree may be reversed and that the said Circuit Court of the United States may be directed to enter a de-
44 cree overruling the demurrer of the defendants, and awarding the complainant a temporary injunction as prayed in the bill of

complaint until the final hearing of the cause, and directing the defendants to answer the bill of complainant.

AMERICAN COLORTYPE COMPANY,
Complainant.

By LACKNER, BUTZ & MILLER,
Solicitors for Complainant American Colortype Company.

(Endorsed) Filed July 30, 1902, Marshall E. Sampsell, Clerk.

And on the same day to-wit: the 30th day of July, being one of the days of the regular days of the July term of said Court, 1902, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit:

45 ORDER OF JULY 30, 1902, ALLOWING APPEAL.

Order o
1902
appe

IN THE CIRCUIT COURT OF THE UNITED STATES

Northern District of Illinois

Northern Division.

American Colortype Company
vs.
Continental Colortype Company, William J. Maas, Baxter J. Fierlein, Henry Freese, Henry E. Schultz, O. H. Quetsch and J. O. M. Seibert. } In Chancery.

Upon reading the petition of the American Colortype Company in the above entitled cause, by its solicitors, Lackner, Butz & Miller, this day filed herein, for an order allowing the appeal of the complainant from the decree heretofore, on July 25th, 1902, entered herein, dismissing the bill of complaint at complainant's costs, and upon reading the assignment of errors of said American Colortype Company this day filed herein with its said petition:

It is ordered that the appeal of said American Colortype Company, complainant, from the final decree made and entered herein on July 25th, 1902, dismissing the bill of complaint at complainant's costs, be and the same is hereby allowed to said American Colortype Company, complainant, to the United States Circuit Court of Ap-

peals for the Seventh Circuit, in accordance with the prayer of said petition, upon the complaint filing herein an appeal bond in the sum of Two Hundred and Fifty Dollars on or before September 1st, 1902, and that a certified copy of the record and the proceedings herein upon which said final decree was entered be forthwith transmitted to said United States Circuit Court of Appeals for the Seventh Circuit.

46 And on to-wit: the 30th day of July, 1902, came the complainant in said entitled cause and filed in the clerk's office of said Court a certain appeal bond in words and figures following to-wit:

eal, 30,

47 Know all Men by these Presents, That we, American Colortype Company, as principal, and John H. Behrens, as surety, are held and firmly bound unto Continental Colortype Company, William J. Maas, Baxter, J. Fierlein, Henry Freese, Henry E. Schultz, O. H. Quetsch and J. O. M. Seibert, in the full and just sum of two hundred and fifty dollars to be paid to the said Continental Colortype Company, William J. Maas, Baxter J. Fierlein, Henry Freese, Henry E. Schultz, O. H. Quetsch, and J. O. M. Seibert, and to their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 29th day of July in the year of our Lord one thousand nine hundred and two.

Whereas, lately at a certain day of the July term 1902 of the Circuit Court of the United States for the Northern District of Illinois Northern Division in a suit depending in said Court, between said American Colortype Company as complainant and said Continental Colortype Company, William J. Maas, Baxter J. Fierlein, Henry Freese, Henry E. Schultz, O. H. Quetsch, and J. O. M. Seibert, as defendants a decree was rendered against the said American Colortype Company complainant dismissing the bill of complaint at complainant's costs and the said American Colortype Company, complainant having obtained an appeal and filed a copy thereof in the Clerk's Office of the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said Continental Colortype Company, William J. Maas, Baxter J. Fierlein, Henry Freese, Henry E. Schultz, O. H. Quetsch, and J. O. M. Seibert, citing and admonishing them to be and appear at a United

States Circuit Court of Appeals, for the Seventh Circuit, to be holden at Chicago within 30 days from the date hereof.

Now, the condition of the above obligation is such, That if the said American Colortype Company shall prosecute its appeal to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered
in presence of—

AMERICAN COLORTYPE COMPANY [SEAL]
By J. H. BEHRENS, *Treasurer* [SEAL]
JOHN H. BEHRENS [SEAL]

Approved July 30/02
KOHLSAAT, *J.*

(Endorsed) Filed July 30, 1902, Marshall E. Sampsell, Clerk.

CIRCUIT COURT OF THE UNITED STATES,

Northern District of Illinois

Northern Division.

American Colortype Company,
vs.
Continental Colortype Company, *et al.* } 26385.

To the Clerk of the above entitled Court:

You will please prepare transcript of the record in this cause to be filed in the office of the clerk of the United States Circuit Court of Appeals for the Seventh Judicial Circuit, under the appeal heretofore perfected to said Court and include in the said transcript the following pleadings, pleadings, proceedings and papers on file to-wit:

Bond for Costs,
Bill of Complaint.
Subpœna and Return,
Order of July 23, 1902,
Demurrer,
Order of July 24, 1902,
Opinion,
Order of July 25, 1902,
Petition for Appeal,
Assignment of Errors,

Order of July 30, 1902, Allowing Appeal,
Appeal Bond,
Clerk's certificate,
Citation,

Said transcript to be prepared as required by law and the rules of this Court and the rules of the United States Circuit Court of Appeals for the Seventh Circuit and on file in the office of the clerk of the said Circuit Court of Appeals at Chicago, before August 29th, 1902.

LACKNER, BUTZ & MILLER,
Attorneys for Appellant.

(Endorsed) Filed August 1 1902, Marshall E. Sampsell, Clerk.

48 Northern District of Illinois, } ss.
Northern Division, }

clerk. I, Marshall E. Sampsell, Clerk of the Circuit Court of the United States for said Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record in said Court and made in accordance with the praecipe filed in the cause entitled American Colortype Company, vs. Continental Colortype Company, William J. Maas, Baxter J. Fierlein, Henry Freese, Henry E. Schultz, O. H. Quetsch and J. O. M. Siebert, as the same appear from the original files and records of said Court now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in the City of Chicago, in said District, this first day of August, 1902.

MARSHALL E. SAMPSELL,
Clerk.

[SEAL]

49 UNITED STATES OF AMERICA, } ss.

The President of the United States, To Continental Colortype Company, William J. Maas, Baxter J. Fierlein, Henry Freese, Henry E. Schultz, O. H. Quetsch, J. O. M. Siebert, Greeting: Citatio

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Seventh Circuit, to be holden at Chicago, within thirty days from the date hereof, pursuant to an appeal allowed by the Circuit Court of the United States for the Northern District of Illinois, Northern Division, wherein American Colortype Company is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf

Witness the Honorable Christian C. Kohlsaat Judge of the Circuit Court of the United States, this thirtieth day of July, in the year of our Lord one thousand nine hundred and two.

KOHLSAAT,
Judge.

(Endorsed) Filed Jul 30 1902 Marshall E. Sampsell, Clerk.

Service of above citation is acknowledged this 30th day of July, 1902.

SHOPE, MATHIS, ZANE & WEBER,
Attorneys for Continental Colortype Company, William J. Maas, Baxter J. Fierlein, Henry Freese, Henry E. Schultz, O. H. Quetsch, J. O. M. Seibert, Defendants.

(Endorsed) Filed Jul 30 1902 Marshall E. Sampsell, Clerk.

50 Be it remembered that on September third, in the year of our Lord, one thousand nine hundred and two and of the Independence of the United States the one hundred and twenty-seventh, the complainant, The American Colortype Company, by its solicitors, filed a certified copy of the order of the United States circuit court of appeals for the seventh circuit, in the case of American Colortype Company *vs.* Continental Colortype Company, William J. Mass, Baxter J. Fierlein, Henry Freese, Henry E. Schultz, O. H. Quetsch and J. O. M. Seibert, in the words and figures following, to wit:

Order of August 28, 1902.

THURSDAY, *August* 28, 1902.

Before Hon. James G. Jenkins, presiding judge.

AMERICAN COLORTYPE COMPANY, Appellant,
vs.
CONTINENTAL COLORTYPE COMPANY ET AL. } 923.

Appeal from the circuit court of the United States for the northern district of Illinois, northern division.

This cause coming on to be heard upon the motion of the appellant, American Colortype Company, to dismiss the appeal taken to this court in this cause from the circuit court of the United States for the northern district of Illinois, and the further motion of said appellant for leave to withdraw the record filed herein from and out of this court and for leave to refile in the Supreme Court of the United States said record as supplemented by the record of any further proceedings in this court in this cause and any further proceedings in the circuit court of the United States for the northern district of Illinois in said cause; on consideration of said motion, it is ordered, adjudged and decreed by the court that the said appeal taken to this court in this cause from the circuit court of the United States for the northern district of Illinois, be and the same is
51 hereby dismissed at appellant's costs. It is further ordered, adjudged and decreed by the court that the said motion of appellant for leave to withdraw the record as aforesaid, and for leave to refile the same as aforesaid, be and the same is hereby allowed.

United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, clerk of the United States circuit court of appeals for the seventh circuit, do hereby certify that the foregoing page contain- a true copy of the order of the United States circuit court of appeals for the seventh circuit entered on the twenty-eighth day of August, A. D. one thousand nine hundred and two, in the case of American Colortype Company *vs.* Continental Colortype Company, William J. Maas, Baxter J. Fierlein, Henry Freese, Henry E. Schultz, O. H. Quetsch and J. O. M. Seibert, No. 923, October

term, 1901, as the same remains upon the files and records of the United States circuit court of appeals for the seventh circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the [SEAL.] seventh circuit, at the city of Chicago, this second day of September, A. D. 1902.

EDWARD M. HOLLOWAY.
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

Filed Sep. 3, 1902.

MARSHALL E. SAMPSELL, *Clerk.*

52 And on the same day, to wit: September 3, 1902, the said complainant, by its solicitors, filed in the clerk's office of said court its certificate of question of jurisdiction, signed by the Hon. Christian C. Kohlsaat, trial judge, in words and figures following, to wit:

53 Gen. No., 26385.

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

AMERICAN COLORTYPE COMPANY
vs.
CONTINENTAL COLORTYPE COMPANY, WILLIAM J. MAAS, BAXTER J. FIERLEIN, HENRY FREESE, HENRY E. SCHULTZ, O. H. QUETSCH, and J. O. M. SEIBERT.

Certificate of Question of Jurisdiction.

This was a suit brought by the American Colortype Company, a New Jersey corporation, against Continental Colortype Company, William J. Maas and others, citizens of Illinois.

The prayer of the bill is for a restraining order and an injunction against the defendants and that the same on final hearing be made perpetual, and there is a prayer for general relief.

All of the defendants filed a demurrer to the said bill of complaint; the causes of demurrer thereby shown were:

1st. That by the complainant's own showing by the said bill it was not entitled to the relief prayed by the bill against the defendants or any of them.

2nd. That it appeared by the said bill that this court had not jurisdiction of the subject-matter of this suit or of the parties to this suit.

This court did not adjudicate the merits of said controversy, but sustained said demurrer upon the second cause of demurrer above shown, and on the 25th day of July, 1902, one of the days of the July term, 1902, of said court, entered its decree in this case, dismissing said bill of complaint for want of jurisdiction at the costs of the complainant.

54 The court doth hereby certify to the Supreme Court of the United States that this court held that it had no jurisdiction

of the subject-matter of this suit or of this controversy and dismissed the said bill of complaint for want of jurisdiction as aforesaid, solely because it held that this case falls within the prohibition contained in the act of August 13, 1888, (25 U. S. Stat. L. 433) (supplement to Rev. Stat. U. S., 1874–1891, page 612) and of that portion of section one of said act reading as follows, to wit:

"Nor shall any circuit or district court have cognizance of any "suit, except upon foreign bills of exchange, to recover the contents "of any promissory note or other chose in action in favor of any "assignee, or of any subsequent holder if such instrument be pay- "able to bearer and be not made by any corporation, unless such suit "might have been prosecuted in such court to recover the said con- "tents if no assignment or transfer had been made."

The court further hereby certifies said question of jurisdiction alone to the said Supreme Court of the United States, and this certificate is granted for the purpose of enabling said Supreme Court of the United States to review said question of jurisdiction hereinabove specified.

Certified to by the Honorable Christian C. Kohlsaat, judge of the said district court of the United States, this third day of September, 1902, being one of the days of the July term, 1902, of said court.

KOHLSAAT, *Judge.* [SEAL.]

(Endorsed:) Filed Sep. 3, 1902, Marshall E. Sampsell, clerk.

55 And on the same day, to wit: September 3, 1902, the said complainant, by its solicitors, filed in the clerk's office of said court its petition for appeal, in words and figures following, to wit:

56 Gen. No., 26385.

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

AMERICAN COLORTYPE COMPANY
vs.
CONTINENTAL COLORTYPE COMPANY, WILLIAM J. MAAS, BAXTER J. FIERLEIN, HENRY FREESE, HENRY E. SCHULTZ, O. H. QUETSCH, and J. O. M. SEIBERT.

Petition for Appeal.

Now comes the complainant, American Colortype Company, and represents to the court that on the 25th day of July, 1902, this court entered its final decree in this cause, dismissing the bill of complaint herein for want of jurisdiction at the costs of complainant; and your petitioner further shows that the ground of the said judgment and decree of said court was that this court held that it had no jurisdiction of this case, because this case fell within the prohibition of the fourth paragraph of section one of the act of August 13, 1888; (25 U. S. Stat. L. 433) (supplement to Rev. Stat. U. S. 1874–1891, page 612).

Your petitioner further shows that said petitioner believing that the court erred in holding that this case falls within the prohibition of said statute, and feeling itself aggrieved by the order and decree herein entered on July 25, 1902, dismissing said bill of complaint at complainant's costs for want of jurisdiction, respectfully prays an appeal from said decree to the Supreme Court of the United States upon the said question of jurisdiction, and states that its reasons for said appeal are specified in the assignment of errors filed herein, and

57 prays the court to certify the said question of jurisdiction to the Supreme Court of the United States, as provided by law, and prays that this appeal may be allowed solely upon said question of jurisdiction, and that a transcript of the record, proceedings and papers in this cause upon which said decree was made, and of the proceedings on this appeal, or such portion thereof as may be necessary for a review of said decree upon said question of jurisdiction, duly authenticated and certified by the clerk of this court, may be sent to said Supreme Court of the United States, pursuant to the statutes in such case made and the rules and practice of said court and of this court.

Dated, September 3, 1902.

AMERICAN COLORTYPE COMPANY,
Complainant,
By LACKNER, BUTZ & MILLER,
Solicitors for Complainant.

(Endorsed:) Filed Sept. 3, 1902, Marshall E. Sampsell, clerk.

58 And on the same day, to wit: September 3, 1902, the said complainant, by its solicitors, filed in the clerk's office of said court its assignment of errors, in words and figures following, to wit:

59 Gen. No., 26385.

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

AMERICAN COLORTYPE COMPANY
vs.
CONTINENTAL COLORTYPE COMPANY, WILLIAM J. MAAS, BAXTER J. FIERLEIN, HENRY FREESE, HENRY E. SCHULTZ, O. H. QUETSCH, and J. O. M. SEIBERT.

Assignment of Errors.

Now on this 3rd day of September, 1902, comes the complainant, American Colortype Company, and files herein the following assignment of errors, upon which it will rely upon its appeal to the Supreme Court of the United States from the decree made and entered herein by this honorable court on the 25th day of July, 1902, dismissing the bill of complaint herein at complainant's costs for want of jurisdiction:

I. The said circuit court of the United States erred in dismissing

the bill of complaint herein at complainant's costs for want of jurisdiction.

II. The said circuit court erred in sustaining the demurrer of the defendants herein to the bill of complaint upon the ground that the said court had no jurisdiction of the subject-matter of this suit or of the parties to this suit.

III. The said circuit court erred in not holding that said ground of demurrer, being the second cause of demurrer shown in said demurrer of the defendants so filed herein, was not well taken and in not overruling said demurrer as to said second cause of demurrer.

IV. The said circuit court erred in holding, as it did hold, that this case and the bill of complaint fall within the prohibition
60 contained in the act of August 13, 1888. (25 U. S. Stat. L. 433), (supplement to Rev. Stat. U. S. 1874–1891, page 611).

V. The said circuit court erred in holding, as it did hold, that this case and the bill of complaint in this case fall within the prohibition contained in the act of August 13, 1888, (25 U. S. Stat. L. 433) (supplement to Rev. Stat. U. S. 1874–1891, page 611) and more particularly specified as that portion of said act shown in the fourth paragraph of the first section of said act and contained on page 612 of said supplement to the Revised Statutes of the United States.

VI. The said circuit court erred in not holding that the said circuit court had jurisdiction of the subject-matter of this suit and of the parties to this suit, notwithstanding the said act of August 13, 1888, and notwithstanding the said fourth paragraph of the first section of said act.

Wherefore the said American Colortype Company, complainant, prays that the said decree of the said circuit court of the United States may be reversed and this cause remanded by said Supreme Court to the said circuit court of the United States for further proceedings to be there taken in pursuance of such determination.

AMERICAN COLORTYPE COMPANY,
Complainant,
By LACKNER, BUTZ & MILLER,
Solicitors for said Complainant.

(Endorsed:) Filed Sept. 3, 1902. Marshall E. Sampsell, clerk.

61 And on the same day, to wit: the 3rd day of September, being one of the days of the regular July term of said court, 1902, in the record of the proceedings thereof, in said entitled cause, before the Hon. Christian C. Kohlsaat, district judge, appears the following entry to wit:

62

AMERICAN COLORTYPE COMPANY *vs.* CONTINENTAL COLORTYPE COMPANY, WILLIAM J. MAAS, Baxter J. Fierlein, Henry Freese, Henry E. Schultz, O. H. Quetsch, and J. O. M. Seibert.	26385.

Upon reading the petition, this day filed herein, of the complainant, American Colortype Company, by its solicitors, Lackner, Butz

& Miller, for an order allowing the appeal of the complainant from the decree heretofore and on July 25th, 1902, entered herein, dismissing the bill of complaint at complainant's costs for want of jurisdiction, and this court having duly certified the question of jurisdiction herein to the Supreme Court of the United States, as provided by law, and said certificate being duly filed in this cause, and upon reading the assignment of errors of said American Colortype Company, this day filed herein with its said petition, and it duly appearing to the court that the appeal heretofore taken in this cause from said decree to the circuit court of appeals for the seventh circuit has been dismissed from and out of said court, and counsel for said defendants being now here in open court:

It is ordered and decreed that the appeal of the said complainant, American Colortype Company, from the final decree made and entered herein on July 25th, 1902, dismissing the bill of complaint herein at complainant's costs, for want of jurisdiction, be and the same is hereby allowed to the said American Colortype Company, complainant, to the Supreme Court of the United States, in accordance with the prayer of said petition, upon the said complainant filing herein an appeal bond in the sum of two hundred and fifty dollars on or before September 3rd, 1902, and that such appeal be allowed solely on the question of jurisdiction, and that a certified copy of the record and proceedings herein, upon which said
63 final decree was entered and of the record and proceedings herein pertaining to said appeal be forthwith transmitted to said Supreme Court of the United States.

64 And on the same day, to wit: September 3, 1902, the said complainant, by its solicitors, filed in the clerk's office of said court its bond on appeal, in words and figures following, to wit:

65 Know all men by these presents, that we, American Colortype Company, a corporation, as principal, and John H. Behrens, as surety, are held and firmly bound unto Continental Colortype Company, William J. Maas, Baxter J. Fierlein, Henry Freese, Henry E. Schultz, O. H. Quetsch and J. O. M. Seibert, in the full and just sum of two hundred and fifty dollars to be paid to the said Continental Colortype Company, William J. Maas, Baxter J. Fierlein, Henry Freese, Henry E. Schultz, O. H. Quetsch, and J. O. M. Seibert and to their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 3rd day of September in the year of our Lord one thousand nine hundred and two.

Whereas, lately at a certain day of the July term 1902, of the circuit court of the United States for the northern district of Illinois, northern division, to wit: on the 25th day of July, 1902 in a suit depending in said court, between said American Colortype Company, as complainant and said Continental Colortype Company, William J. Maas, Baxter J. Fierlein, Henry Freese, Henry E.

Schultz, O. H. Quetsch and J. O. M. Seibert, as defendants a decree was rendered against the said American Colortype Company complainant, dismissing the bill of complaint at complainant's costs for want of jurisdiction and the said American Colortype Company, complainant having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the said decree in the aforesaid suit, and a citation directed to the said Continental Colortype Company, William J. Maas, Baxter J. Fierlein, Henry Freese, Henry E. Schultz, O. H. Quetsch, and J. O. M. Seibert, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington within 30 days from the date thereof,

Now, the condition of the above obligation is such, that if the said American Colortype Company shall prosecute its appeal to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

AMERICAN COLORTYPE COMPANY, [SEAL.]
By JOHN H. BEHRENS, *Treas.* [SEAL.]
JOHN H. BEHRENS. [SEAL.]

Sealed and delivered in presence of—

—— ——.

Approved Sep. 3, 1902
KOHLSAAT, *J.*

(Endorsed:) Filed Sep. 3, 1902, Marshall E. Sampsell, clerk.

66 NORTHERN DISTRICT OF ILLINOIS, } *ss:*
Northern Division, }

I, Marshall E. Sampsell, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of all proceedings had of record in said court, in the cause entitled American Colortype Company *vs.* Continental Colortype Company, William J. Maas, Baxter J. Fierlein, Henry Freese, Henry E. Schultz, O. H. Quetsch and J. O. M. Siebert, as the same appear from the original files and records of said court, now remaining in my custody and control.

Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in the city of Chicago, in said district, this 10th day of September, 1902.

MARSHALL E. SAMPSELL, *Clerk.*

67 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Continental Colortype Company, William J. Maas, Baxter J. Fierlein, Henry Freese, Henry E. Schultz, O. H. Quetsch, and J. O. M. Seibert, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an appeal allowed by the circuit court of the United States for the northern district of Illinois, northern division wherein American Colortype Company is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Christian C. Kohlsaat judge of the district court of the United States this 3rd day of September, in the year of our Lord one thousand nine hundred and two.

KOHLSAAT, *Judge.*

Service of above citation is acknowledged this 3rd day of September 1902.

SHOPE, MATHIS, ZANE & URBER,
Solicitors and of Counsel for Continental Colortype Company, William J. Maas, Baxter J. Fierlein, Henry Freese, Henry E. Schultz, O. H. Quetsch, and J. O. M. Seibert, Appellees.

[Endorsed:] No.— Supreme Court of the United States American Colortype Company *vs.* Continental Colortype Company *et al.* Citation to the Supreme Court of the United States Filed Sep 3 1902 Marshall E. Sampsell, clerk.

Endorsed on cover: File No. 18,668. N. Illinois C. C. U. S. Term No. 440. American Colortype Company, appellant, *vs.* Continental Colortype Company, William J. Maas, Baxter J. Fierlein, *et al.* Filed September 22d, 1902.